

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Luke Petrinovic	Team: Squad #13	CCRB Case #: 201605082	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/06/2016 6:30 PM	Location of Incident: 100 Centre Street	Precinct: 05	18 Mo. SOL 12/6/2017	EO SOL 12/6/2017	
Date/Time CV Reported Mon, 06/06/2016 10:22 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/13/2016 12:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Desmond Mohan	27964	946013	MAN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ming Chen	31428	952579	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Desmond Mohan	Abuse: PO Desmond Mohan threatened to arrest § 87(2)(b)	
B.POM Desmond Mohan	Force: PO Desmond Mohan used physical force against § 87(2)(b)	
C.POM Desmond Mohan	Force: PO Desmond Mohan used a chokehold against § 87(2)(b)	

### Case Summary

On June 6, 2016, LT Jamal Bishop, of Manhattan Court Section, reported this case over the phone to the Internal Affairs Bureau, as a report of an injured prisoner, § 87(2)(b). It was referred to the CCRB, and received on June 13, 2016, under log number 16-20599.

On June 6, 2016, at approximately 6:30 p.m., § 87(2)(b) was brought to Manhattan Central Booking, located at 100 Centre Street, in Manhattan, by PO Ming Chen, of the 5<sup>th</sup> Precinct, to be arraigned. § 87(2)(b) had been arrested earlier that day for § 87(2)(b). In the intake section of central booking, § 87(2)(b) was met by PO Desmond Mohan, of Manhattan Court Section, who was assigned to prisoner transport. During the lodging process, PO Mohan attempted to obtain a DNA sample from § 87(2)(b) which consists of having the prisoner take a swab of their inner cheek. § 87(2)(b) objected to giving the sample, and PO Mohan told him that he would be charged with contempt of court if he refused to provide the sample (**Allegation A**). § 87(2)(b) then consented to providing the DNA sample.

§ 87(2)(b) attempted to administer the DNA swab to the inside of his cheek, but PO Mohan informed him that he had done it incorrectly and needed to do it again. After two attempts, § 87(2)(b) became frustrated and threw the DNA swab, which is roughly the size of a pencil, at PO Mohan. In response, PO Mohan pushed § 87(2)(b) to the ground, and allegedly grabbed him by the neck and choked him (**Allegations B and C**). PO Mohan left the area soon after that, and another officer completed § 87(2)(b)'s lodging process.

### Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest, and the chokehold allegation, this case was not eligible for mediation.
- As of September 28, 2016, no Notice of Claim related to this incident has been filed with the Comptroller's office (Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED].

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 03).
- PO Mohan has been the subject of three previous allegations of misconduct across two prior cases during his eight year tenure with the NYPD. One of the allegations concerned the use of force, and it was withdrawn by the complainant. None of the allegations made against PO Mohan have been substantiated (Board Review 04).

### Findings and Recommendations

#### Allegations not Pleaded

- § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation A – Abuse of Authority: PO Desmond Mohan threatened to arrest § 87(2)(b)**

It is undisputed that PO Mohan presented § 87(2)(b) with a consent form for providing a DNA sample and that, after initially being resistant, § 87(2)(b) eventually consented and signed the form. § 87(2)(b) alleged that PO Mohan presented him with a form, and requested he sign it to show that he consented to providing a DNA sample. § 87(2)(b) could not recall the exact conversation he had with PO Mohan regarding the DNA sample; however, recalled that he was told by PO Mohan that refusing to provide the sample would result in him being charged with contempt of court. He ultimately signed the consent form under what he felt was duress, because he feared the criminal charge (Board Review 05).

PO Mohan acknowledged that he attempted to have § 87(2)(b) provide a DNA sample. Obtaining DNA samples from prisoners is one of the routine responsibilities that PO Mohan carries out whenever it is required for a prisoner's arraignment. He explained in his interview that, as part of the standard intake procedure, he accessed information about § 87(2)(b) in a system known as Zolpa. PO Mohan understands the Zolpa system to be a database used for the arraignment process. It is maintained by the NYPD; however, it draws information and data from the criminal court records. In this case, the Zolpa database informed PO Mohan that § 87(2)(b)'s DNA was needed. PO Mohan understood that this meant that the court needed a DNA sample from § 87(2)(b) not the NYPD. He was not informed, and did not know why § 87(2)(b)'s DNA was needed, or whether there had been any kind of court order to obtain his DNA. The Zolpa system does not notify officers of this information.

In his interview, PO Mohan explained that he believes that prisoners are able to refuse to give a DNA sample without resulting with them being kept in custody indefinitely. He is, however, aware that refusing to provide a DNA sample can result in a prisoner being charged with contempt of court. He stated that this would happen only in cases where the DNA is required by a court order, and it has happened multiple times in PO Mohan's experience.

PO Mohan presented the DNA sample consent form to § 87(2)(b) and explained to him what it was and that his DNA was needed by the court. He told § 87(2)(b) that he could refuse to provide DNA if he wanted. § 87(2)(b) appeared reluctant, and asked several questions that PO Mohan could not recall. He never clearly refused to provide the sample, and ultimately signed the consent form. PO Mohan could not recall if he ever told § 87(2)(b) that he could be charged with contempt of court for refusing to sign the form, but stated in his interview that he may have as it is something he routinely tells prisoners during this procedure (Board Review 06).

PO Chen stated that § 87(2)(b) initially refused to provide a DNA sample, and then consented after PO Mohan asked him a second time. He could not recall any further detail about the conversation PO Mohan and § 87(2)(b) had about the DNA sample (Board Review 07).

The Zolpa system contains information needed for a prisoner's arraignment in criminal court. It does include information pertaining to whether a prisoner has provided a DNA sample. As the system is constantly updated, the investigation was unable to determine what information the system displayed about § 87(2)(b) at the time it was viewed by PO Mohan. However, Zolpa records show that § 87(2)(b) had provided a DNA sample already, after being arrested one month prior to the incident (Board Review 09). This was discovered on the incident date after the altercation with PO Mohan, and § 87(2)(b) was not required to provide a DNA

sample (Board Review 08). There was no warrant or other court order for § 87(2)(b) to produce a DNA sample.

§ 87(2)(g)

Under Penal Law 215.50, a person is guilty of criminal contempt if they intentionally fail to obey a mandate issued pursuant judiciary law. An order to provide a DNA sample is one such mandate (Board Review 10).

§ 87(2)(g)

**Allegation B – Force: PO Desmond Mohan used physical force against § 87(2)(b)**

It is undisputed that PO Mohan pushed § 87(2)(b) to the ground after he threw a DNA swab, which was roughly the size of a pencil and had cotton wrapped around one end. § 87(2)(b) was standing next to PO Mohan at this time, and was not handcuffed. § 87(2)(b) stated that PO Mohan pushed him back against a wall, and he fell to the ground. He admitted that he had refused to provide the DNA sample after several failed attempts, and that he threw the swab, although he denied throwing it directly at PO Mohan. § 87(2)(b) threw the swab because he was frustrated, but he denied shouting, waving his arms, or otherwise becoming physically aggressive with the officers.

PO Mohan stated that § 87(2)(b) had been uncooperative with him during the process of obtaining the DNA sample. He had been unreasonable, in that he was going back and forth about whether he would provide the sample or not. § 87(2)(b) then ignored PO Mohan's instructions about how to use the DNA swab, so that sample had to be retaken. After he told § 87(2)(b) several times to retake the test, § 87(2)(b) tossed the DNA swab at PO Mohan, making contact with his arm. He pushed § 87(2)(b) once and § 87(2)(b) fell to the floor.

PO Mohan explained in his interview that he felt threatened by § 87(2)(b) after he threw the DNA swab. Although § 87(2)(b) had not done anything physically aggressive aside from throwing the swab, he had been uncooperative with PO Mohan and had a "difficult attitude." PO Mohan stated that it was not his intention to push § 87(2)(b) to the ground, but just to create distance between them.

PO Chen stated that PO Mohan grabbed § 87(2)(b) by the chest after he threw the swab, and pushed him back into a wall, a distance of three feet. § 87(2)(b) fell to the ground. PO Chen corroborated that § 87(2)(b) had not done anything that was physically aggressive aside from throwing the DNA swab.

§ 87(2)(g)

Under the provisions of Patrol Guide procedure 221.01, officers are permitted to use force provided that it is reasonable under the circumstances. The factors that should be

considered in determining reasonableness include the actions of the subject and the immediacy of the perceived threat. Officers must, whenever appropriate, use de-escalation tactics to gain compliance from a subject before resulting to physical force. (Board Review 12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

**Allegation C – Force: PO Desmond Mohan used a chokehold against § 87(2)(b)**

§ 87(2)(b) stated that PO Mohan grabbed him by the neck with one hand, and squeezed for approximately 20 to 30 seconds. PO Mohan's fingernails dug into his neck causing visible marks, and he was unable to breathe. He almost lost consciousness and fell to the ground before PO Mohan let go. Soon after, he was seen by EMTs at Manhattan Central Booking, but he told them he was uninjured because he did not want medical treatment.

PO Mohan denied ever grabbing § 87(2)(b) by the neck, and PO Chen stated that PO Mohan never grabbed § 87(2)(b)'s neck, but only grabbed him briefly by the upper chest. The pre-arraignment screening form filled out for § 87(2)(b) corroborates that he refused medical attention, and notes that he did not appear injured (Board Review 11).

Although § 87(2)(b) stated in his interview that he refused medical treatment because he did not want to bother with it, the FDNY EMTs that saw him are responsible for noting whether a prisoner appears sick or injured. In this case, EMTs noted on the pre-arraignment screening form that § 87(2)(b) did not appear sick or injured, § 87(2)(g)

§ 87(2)(g)

[REDACTED]

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer:

\_\_\_\_\_  
Title/Signature

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Print

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Date